Supreme Court, U.S.
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87-1585
No.

IN THE

Supreme Court of the United States

October Term, 1987

EMILE E. GOUIRAN,

Petitioner,

against

COMMITTEE ON CHARACTER AND FITNESS, SECOND DEPARTMENT,

Respondent.

Petition for a Writ of Certiorari to The Supreme Court, State of New York, Appellate Division, Second Judicial Department

---

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QUESTION PRESENTED

Is a procedure which permits the State to exclude a person from the practice of law without giving him notice of and affording him a hearing on all the grounds for his rejection, violative of the requirements of procedural due process of the 14th and 5th Amendments of the U.S. Constitution?

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IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1987
No.

EMILE E. GOUIRAN,

Petitioner,

v.

COMMITTEE ON CHARACTER AND
FITNESS, SECOND DEPARTMENT,

Respondent.

PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT, STATE OF
NEW YORK, APPELLATE DIVISION,
SECOND JUDICIAL DEPARTMENT

To the Honorable Chief Justice and
Associate Justices of the Supreme
Court of the United States:

The Petitioner prays that a writ of certiorari issue to review the judgment of the Supreme Court of the State of New

York, Appellate Division, Second Judicial Department, which denied petitioner's application for admission to the Bar of the State of New York. The New York Court of Appeals denied leave to appeal.

OPINIONS BELOW

The judgment appealed from is appended hereto at pp. 3a-7a; it has not been reported (App. Div., 2d Dep't, November 24, 1986), renewal and reargument denied (App. Div., 2nd Dep't, June 5, 1987) (14a-18a), lv to appeal den. 70 NY2d 614, ___ NE2d ___ (December 23, 1987 (1a-2a).

JURISDICTION

The judgment sought to be reviewed was entered November 24, 1986; renewal and reargument was denied by order entered June 5, 1987; leave to appeal to the Court of Appeals of the State of New

York was denied by order entered December 23, 1987. There was no order respecting a rehearing or an extension of time in which to petition for certiorari. Jurisdiction to review the judgment by writ of certiorari is conferred by 28 U.S.C. 1257 (3), and Willner v. Committee on Character, 373 U.S. 96, 10 L.Ed.2d 224, 83 S. Ct. 1175 [1962] (see also: Spevack v. Klein, 385 U.S. 511, 17 L.Ed. 2d 574, 87 S. Ct. 625; Cummings v. Missouri, 71 U.S. 277, 18 L.Ed. 365; Matter of Garland, 71 U.S. 333, 19 L.Ed. 366).

CONSTITUTIONAL AND STATUTORY PROVISIONS

The Constitution of the United States

Amendment 5

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment 14

(Adopted July 28, 1868)

Section 1

All persons born or naturalized in the United States, and subject to the jurisdiction therefor, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State

deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

New York Judiciary Law § 90(1)

McKinney's Laws, Vol. 29, p. 366

§ 90. Admission to and removal from practice by appellate division; character committees.

1. a. Upon the state board of law examiners certifying that a person has passed the required examination, or that the examination has been dispensed with, the appellate division of the supreme court in the department to which such person shall have been certified by the state board of law examiners, if it shall be satisfied that such person possesses the character and general fitness requisite for an attorney and counsellor-at-law, shall admit him to practice as such attorney and counsellor-at-law in all the courts of this state, provided that he has in all respects complied with the rules of the court of appeals and the rules of the appellate divisions relating to the admission of attorneys.

New York Civil Practice
Law and Rules

Article 94: Rules 9401, 9402 and 9404

McKinney's Laws, CPLR

1987 Pamphlet Edition, pages 479, 480

Rule 9401. Committee

The appellate division in each judicial department shall appoint a committee of not less than three practicing lawyers for each judicial district within the department, for the purpose of investigating the character and fitness of every applicant for admission to practice as an attorney and counselor at law in the courts of this state. Each member of such committee shall serve until his death, resignation or the appointment of his successor. A lawyer who has been or who shall be appointed a member of the committee for one district may be appointed a member of the committee for another district within the same department.

Rule 9402. Application for admission

Every application for admission to practice pursuant to the provisions of paragraph a of subdivision one of section ninety of the judiciary law by a person who has been certified by the state board of law examiners, in accordance with the provisions of section four hundred sixty-four of said law, shall be referred by the appellate division to the committee for a district in its judicial department. Every application for admission to practice which is made on motion without the taking of the bar examination, pursuant to rules of the court of appeals and the provisions of paragraph b of subdivision one of section ninety of the judiciary law, by a person already admitted to practice in another

jurisdiction, shall be referred by the appellate division to the committee for a district in its judicial department.

* * *

Rule 9404. Certificate of character and fitness

Unless otherwise ordered by the appellate division, no person shall be admitted to practice without a certificate from the proper committee that it has carefully investigated the character and fitness of the applicant and that, in such respects, he is entitled to admission. To enable the committee to make such investigation, the justices of the appellate division are authorized to prescribe and from time to time to amend a form of statement or questionnaire to be submitted by the applicant, including specifically his present and such past places of actual residence as may be required therein, listing the street and number, if any, and the period of time he resided at each place.

Rules of the Supreme Court
of the State of New York, Appellate
Division, Second Judicial Department

Sections 690.5, 690.6, 690.10, 690.11,
690.14, 690.15, 190.16 and 690.17

McKinney's 1987 New York Rules of Court

(22 NYCRR Part 690)

§ 690.5. Filing of Application Papers

Every applicant for admission to practice as an attorney and counselor at law pursuant to subdivision 1(a) or 1(b) of section 90 of the Judiciary Law, may obtain the standard forms and instructions for that purpose from the secretary of the committee on character and fitness. Every application for admission to practice pursuant to subdivision 1(a) of section 90 of the Judiciary Law may obtain such forms and instructions immediately after taking the bar examination, and may file a completed application, consisting of the standard form of questionnaire and the other required papers as directed by the instructions, at any time thereafter, regardless of whether the results of the bar examination have yet been issued. As soon as the applicant shall receive a letter from the State Board of Law Examiners stating that the applicant has passed the bar examination, the applicant shall file that letter with the secretary of the committee on character and fitness, and if the applicant's questionnaire was verified more than 45 days prior to such filing, the applicant shall also file a supplemental affidavit stating whether there have been any changes in the facts stated therein and setting forth any such changes.

§ 690.6. Referral to Committee on Character and Fitness

Every completed application shall be referred for investigation of the applicant's character and fitness to a

committee on character and fitness designated by the Appellate Division of the department to which the applicant is eligible for certification by the State Board of Law Examiners after passing the bar examination, or to which the applicant is applying for admission without examination in accordance with the rules of the Court of Appeals for the admission of attorneys and counselors at law.

* * *

§ 690.10. Procedure Upon Recommendation of Disapproval, Deferral or Committee Consideration

If the committee shall fail to approve the application followings its own investigation, or following a recommendation submitted by the member or members conducting an investigation pursuant to designation that the application be disapproved or that action thereon be deferred, a hearing on the application shall be held expeditiously before the committee or a subcommittee of at least two members designated by the chairman or acting chairman. Such a hearing shall also be held if the member or members conducting an investigation pursuant to designation shall recommend consideration of the application by the committee and the committee shall fail to approve the application following such consideration.

§ 690.11. Notice of Hearing; Waiver

Unless waived in writing by the applicant, a written notice of hearing of not less than twenty days, specifying the time and place of the hearing, shall be served on the application. In addition, the notice of hearing shall inform the applicant of the matter to be inquired into and of the applicant's right to be represented by an attorney, and such information shall also be given to the applicant prior to the hearing if the applicant has waived notice of hearing.

* * *

§ 6904.14. Decision or Report Following Hearing

Where the hearing has been conducted by the committee, the committee shall render a decision, and where the hearing has been conducted by a subcommittee, the subcommittee shall render a report, within sixty days after the matter is finally submitted, unless the time is extended by consent of the applicant or order of the Appellate Division. The decision of the committee or the report of the subcommittee, as the case may be, may recommend approval or disapproval of the applicant or deferral of action on the application for a period not to exceed six months.

§ 690.15. Transmittal of Decision to Appellate Division Following Hearing Conducted by Committee

Where the hearing has been conducted by the committee, the committee shall transmit its decision to the Appellate Division, together with the appropriate certificate if it recommends approval of the applicant. If the decision recommends disapproval of the applicant or deferral of action on the application, it shall include a statement of the grounds on which it is based, and a copy thereof shall be served on the applicant or the applicant's attorney.

§ 690.16. Review by Committee Following Hearing Conducted by Subcommittee

Where the hearing has been conducted by a subcommittee, the subcommittee's report and the stenographic record or tape recording of the hearing shall be referred for consideration and review to the committee, which shall render a decision thereon expeditiously. The committee's decision may confirm, reverse or modify the subcommittee's report, or direct that a further hearing be held before the same or another subcommittee. If the committee's decision recommends disapproval of the applicant or deferral of action on the application, it shall include a statement of the grounds on which it is based, and a copy thereof shall be served on the applicant or the applicant's attorney. The decision shall be transmitted to the Appellate Division, together with the appropriate certificate, if it recommends approval of the applicant. The deliberations of the committee shall be confidential and the

applicant shall not be entitled to compel disclosure thereof.

§ 690.17. Petition to Appellate Division Following Adverse Decision

If the committee's decision is adverse to the applicant, the applicant may, within sixty days after service of a copy thereof, petition the Appellate Division, in accordance with CPLR 9404, on notice of not less than eight days served on the committee together with any supporting papers, for an order granting the application for admission to practice notwithstanding the committee's decision.

STATEMENT OF THE CASE

The facts material to the consideration of the question presented, briefly stated, are as follows:

The prior proceedings had herein are as follows:

1. On or about June 27, 1984 Petitioner filed his formal application dated June 21, 1984 for Admission to the Bar of the State of New York with the Committee on Character and Fitness of the Appellate Division, Second Judicial Department ("Committee").

2. By letter of the Committee dated July 3, 1985, Petitioner was notified that a subcommittee had been appointed to conduct a hearing regarding his Application and he was further notified that proof would be taken regarding six

specified areas of inquiry (page reference to appendix, i.e. 25a-30a).

3. On July 25, 1985 a subcommittee hearing was held before Committee members Peter R. Affatado and M. Kathryn Meng. Petitioner testified under oath and certain documents were marked as exhibits.

4. By letter of the Committee dated May 5, 1986, Petitioner was advised that the Committee voted to deny his admission to the Bar based upon "1. Your general failure to make adequate or honest disclosures . . ." and "2. Your failure to indicate to the general public, as evidenced by the letterhead on your office stationery, that you were not an attorney duly admitted to practice in the State of New York" (31a-33a). Petitioner's request to be provided with the Committee's full report to the

Appellate Division was denied on or about May 28, 1986 by the Court.

5. By Notice of Petition dated July 2, 1986, Petitioner moved in the Appellate Division in accordance with CPLR 9404 and 22 NYCRR 690.17, for, among other things, an order granting his admission to the Bar of the State of New York, notwithstanding the adverse decision of the Committee on Character and Fitness.

6. By letter dated October 13, 1986, the Petitioner renewed his request to receive a copy of the full report of the Committee on Character and Fitness, which request was subsequently granted by the Court (34a-36a). A copy of the report was received by the Petitioner's attorney; however, the receipt was subsequent to the time he had been informed that the Court had determined

the July 2, 1986 petition, namely by denying same (Committee Report and Minutes of Committee Meeting of February 28, 1986, 37a-54a). The Committee's report and minutes contained numerous substantial errors and misstatements of material facts. Moreover, the report made clear that the Committee's negative recommendation was based upon matters of which Petitioner had no notice, nor was he afforded an opportunity to respond thereto, which will be developed in further detail hereafter.

7. By order dated November 24, 1986, the Appellate Division "denied in all respects" Petitioner's application for admission notwithstanding the Committee's negative recommendation (3a-7a).

8. By Notice of Motion dated March 6, 1987, Petitioner moved in the Appellate Division for, among other

things, renewal and reargument of the Petition for Admission based upon new material facts, namely the Committee's "Report to the Court" and Minutes of the Meeting of the "Committee as a Whole" held on February 28, 1986. In support of his motion petitioner argued as follows:

It was abundantly clear based upon a review of the full report of the Committee on Character and Fitness and the minutes annexed thereto, that that report and those minutes are fraught with substantial errors and misstatements of material facts. It was further abundantly clear that to the extent the Court relied on the Character Committee's assertions of "facts" as set forth in its report in deciding to deny the petitioner's application, that that decision was in error.

Most glaring of the factual inaccuracies contained in the Committee's report were statements made by Committee Member Peter Affatato, where Mr. Affatato affirmatively stated that the subcommittee inquired into whether petitioner was "ever in the practice of law in New York". Mr. Affatato further stated that "I showed him a copy of a letterhead which we had in our file indicating that he maintains a law office in Staten Island" (49a).

In point of fact, the Subcommittee conducted no such inquiry, petitioner was never asked concerning whether he had practiced law in New York; moreover, he was never shown any letterhead of a law office in Staten Island, and the Committee's "notice" letter of July 3, 1985 (25a-30a) never addressed that issue. The Court's attention was

directed to the full minutes of the Committee's meeting of February 28, 1986 which minutes failed to disclose, as Mr. Affatato claimed, that any inquiry was made in this area.

In further point of fact, the "letterhead" issue was never formally raised to petitioner at any time during the Committee's deliberations on his application. The failure to give petitioner notice of this issue--an issue which the Committee seized upon in denying petitioner's admission--was one of the bases for petitioner's July 2, 1986 application for admission notwithstanding the Committee's recommendation. Point One of petitioner's memorandum of law in support of his application, specifically addressed this issue as follows:

> Applicant received no notice of, nor was he given a hearing on the Committee's finding (2) regarding his office letterhead. That finding should be disregarded or in the alternative the entire matter should be remanded to the Committee for further proceedings consistent with the applicant's recognized due process rights and the rules of this Court.

It is interesting to note that in response to Mr. Affatato's statement that petitioner "has given the general public the unquestioned impression that he is admitted to practice law in the state of New York" (52a-53a), Committee member Herman Pogul specifically asked whether there was any evidence that petitioner had stated that he was admitted: "MR. POGUL: Did he say he was admitted?" The minutes do not disclose any reply and therefore we can assume Mr. Affatato gave no response to Mr. Pogul's question. Perhaps Mr. Affatato's lack of response was due to his concession that, regarding

the practicing law issue, "We are not in a position to verify that . . ." (53a).

Other examples of the inaccuracies and misstatements of material facts contained in the Character Committee's Report were as follows:

In support of his gratuitous comment that "this gentleman simply tries to avoid answering certain questions directly", Mr. Affatato erroneously stated that "And in one of the proceedings was a letter from Castle Abstract. I said to him: Do you have an interest in Castle Abstract? He said: No. I said: Well, Castle Abstract is in the very same office building as your office. He said: Oh! Really! He said: Well, my brother-in-law owns Castle Abstract. His name is Bob Ryan.

Petitioner's response to Mr. Affatato's actual questions concerning

this matter were not evasive but were rather direct and affirmative. Those specific questions and answers were as follows: "Q: All right. Annexed to your application is a report of a judgment search by Castle Abstract. Do you have any relationship to Castle Abstract? (emphasis added). A: No. By Mr. Affatato: Q: They were tenants in your building; isn't that so? A: No. Actually, Robert Ryan is my wife's brother. Q: Robert Ryan is the title officer? A: He is the owner of Castle Abstract. Q: You had no interest in them? A: I had no interest in them. Q: They did obtain an office, or did you, in that building? A: He didn't go into business until much later, until after I was out. My mother's corporation owns that building--O.K. He does operate an office out of there. Actually, I don't

think Castle Abstract came to be until after I was out. Mr. Affatato: Okay." (See Minutes of July 25, 1985, Subcommittee Hearing at pp. 21-22). Mr. Affatato's erroneous characterization of the manner in which petitioner conducted himself before the Subcommittee was bad enough, misstatement of the specific questions and petitioner's specific answers is unforgivable.

The minutes of the Committee's February 28, 1986 meeting contain the following statement by Mr. Affatato: "During that period of time (1969-1973) a letter on his stationery was circulated which indicated that his realty firm would discourage the use of certain attorneys . . . it did appear on his letterhead. However, he has denied any notice of it. I repeat, he has denied any notice of it. He said it was

disseminated without his permission. We have had no opportunity to contradict that statement . . . he should have been aware of it. If he wasn't, he wasn't taking care of his shop." (43a-45a, emphasis added). Mr. Affatato's statement that "Petitioner should have been aware of the memo" is totally misleading and inconsistent with the facts disclosed at the Subcommittee hearing. Concerning the memo, petitioner was asked "Had you authorized this memorandum? A: Absolutely not . . . I don't know, in fact, that it came out of my office." (transcript at p. 27). Petitioner conceded that he was working as a real estate broker in 1973--the date of the purported memo--he further stated that at that time the business had five branches, "we employed almost 100 people, 75 of which were full-time sales

department personnel, and there were about 15 or 20 officers under me at that time." (transcript at p. 28). He further acknowledged that he had received complaints from some of his sales personnel about certain attorneys who time and again created problems. He testified that he did intervene in one or two cases and had agreed with the attorney in question that any contracts signed by that attorney's client would be marked "subject to the approval" of the attorney. (transcript at p. 29).

At page 1 of the Committee's "Report to the Court", the following statement was made: "During that hearing (before the Subcommittee), it was ascertained that applicant was admitted to the bar of the state of New Jersey on June 7, 1984 . . ." (38a). The unmistakable inference of this statement, namely that the fact

of petitioner's admission to the New Jersey bar first came to light during the July 25, 1985 Subcommittee hearing is clearly erroneous. The petitioner in response to two separate and distinct questions on his initial application for admission [14(b) and 20(a)] affirmatively stated that he had been admitted to the bar of the State of New Jersey in June, 1984 (see: excerpts from petitioner's application for admission dated June 21, 1985). Moreover, petitioner's candor and forthrightness before the Subcommittee is indicated by the fact that he voluntarily, without prior request, provided the members of the Subcommittee with a full and complete copy of his application to the New Jersey bar at the hearing held on July 25, 1985: "By Mr. Affatato: Mr. Cooper, would you have any objection if we were to receive your

client's permission to request a copy of his application from the New Jersey State Board of Examiners? Mr. Cooper: We can provide you with a copy of that . . . I have a copy right here . . . Mr. Affatato: Mr. Cooper, I am reading from the application which you were so kind to hand me . . ." (Transcript at pp. 35-36).

Mr. Affatato stated to the members of the Committee that "during the period of time we are talking about, 1969 through 1973, several law suits were commenced against this applicant and his firm. Most of them have been disposed of. However, that becomes important because he applied for membership in the New Jersey bar and failed to reveal that information." (43a-44a). This statement is inaccurate on several counts: 1) the specific question (X A) of the New Jersey

application read as follows: "Have you, in your individual capacity, ever been a party to or had or claimed any interest in any civil proceeding" (excerpt from New Jersey Bar Application dated December 5, 1983); Petitioner properly responded "No" since he was not involved in any civil proceeding in his "individual" capacity; 2) all, not "most" of the litigations involving petitioner had been disposed of, as petitioner stated to the Subcommittee: "Q: Are there are actions presently pending against you personally? A: Nothing against me now personally . . ." (Transcript at p. 32); 3) petitioner did in fact reveal in his New Jersey application litigation involving

Gouiran Real Estate Company, Inc. (see X D).[1]

Further examples of the Committee's gratuitous, misleading or inaccurate statements are as follows: 1) in the minutes of the Committee meeting, Mr. Affatato made the following statement: "Following all of his real estate transactions, and all of his machinations in the real estate business . . ." (45a). Petitioner is at a loss to understand upon what information--he is certainly aware of none--the characterization "machinations" is ascribed to him. At the very least, this characterization was grossly prejudicial, particularly when

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[1]It is noteworthy that although the Committee erroneously found that petitioner did not disclose certain facts in his New Jersey application, the Committee made no finding that petitioner failed to reveal material facts in his New York application, the principal focus of their inquiry.

offered at the meeting upon which the full Committee voted on his application for admission; 2) Mr. Affatato states that in 1976 "his license was suspended for 30 days; or, pay a $250.00 fine, which he promptly did" (45a). In fact, the fine imposed was $100.00; and 3) on page 2 of the Minutes Mr. Affatato states that petitioner was variously associated with businesses known as Richmond Realty Services, National Richmond Realty Services, Inc. and Gouiran Realty Holding Corp. "during the period of time we are talking about, 1969 through 1973 . . ." (43a). In fact, petitioner had relationships with one of more of those companies up to and including 1978, a fact which he set forth in his initial application and testified to at the Subcommittee hearings (see transcript at p. 26).

9. By order made and entered June 5, 1987 the Appellate Division "denied in all respects" Petitioner's motion to renew and reargue, as well as his motion for leave to appeal to the Court of Appeals (14a-18a).

10. By order made and entered on December 23, 1987, the Court of Appeals denied Petitioner's motion for leave to appeal (1a-2a).

Petitioner has raised the objection that he has been denied procedural due process in that he received no notice of or afforded a hearing on all of the grounds for the Appellate Division's rejection of his application for admission, in his motion for renewal and reargument in the Appellate Division and in his motion for leave to appeal to the Court of Appeals.

REASONS FOR ALLOWANCE OF THE WRIT

The writ should be granted in accordance with 28 USC 1257(3), by virtue of Rule 17(c) of this Court in that a state court has failed to decide a federal question in a way in conformity with applicable decisions of this Court.

This Court will grant certiorari in a case of a state Bar admission proceeding (Willner v. Committee on Character, 373 U.S. 96 [1962], in the same manner as it will grant certiorari in a case of a state disbarment proceeding (Ohralik v. Ohio State Bar Association, 436 U.S. 447 98 S. Ct. 1912, 56 L.Ed.2d 444; Spevack v. Klein, 385 U.S. 511, 87 S.Ct. 625, 17 L.Ed.2d 574). A Writ of Certiorari issued by this Court is the only remedy available, like in a state disciplinary proceeding, to review a state bar

admission proceeding, the lower federal courts lacking subject matter jurisdiction to conduct such reviews (Selling v. Radford, 243 U.S. 46, 50, 37 S. Ct. 377, 378, 61 L.Ed. 585; see also: Theard v. United States, 354 U.S. 278, 282, 77 S. Ct. 1274, 1276, 1 L.Ed.2d 1342). Within the availability of certiorari the states could trample upon recognized due process rights of those persons seeking admission to the bar with impunity.

In Willner v. Committee on Character, supra, Konigsberg v. California, 353 U.S. 252, 77 S. Ct. 722, 1 L.Ed.2d 810 and Schware v. Board of Bar Examiners, 353 U.S. 232, 77 S. Ct. 752, 1 L.Ed.2d 796, this Court granted certiorari to review the constitutionality of state procedures for admission to the bar and in each case

reversed the state determination finding due process violations.

Similarly, in Spevack, supra, this Court, following a grant of certiorari, reversed a state disbarment as a violation of due process of law and a violation of federal constitutional rights.

The writ should be allowed herein because the denial of petitioner's bar admission was in violation of due process rights protected under the 14th and 5th Amendments.

This Court has consistently held that although the States have a compelling interest in the regulation of the practice of law (Goldfarb v. Virginia St. Bar, 421 U.S. 773, 792, 95 S. Ct. 2004, 44 L.Ed.2d 572), that power may not be exercised in an arbitrary or discriminatory manner (Konigsberg v.

California, supra), nor may it be exercised so as to abrogate federally protected rights (Bates v. St. Bar of Arizona, 433 U.S. 350, 97 S. Ct. 2691, 53 L.Ed.2d 810; Johnson v. Avery, 393 U.S. 483, 490, 89 S. Ct. 747, 21 L.Ed.2d 718; see also: Erdmann v. Stevens, 458 F.2d 1205, 1210; Matter of Ming, 469 F.2d 1352, 1355).

Recognizing these principles this Court has stated that the requirements of procedural due process must be met before a State can exclude a person from practicing law (Willner v. Committee on Character, 373 U.S. 96 [1962]). In Willner, the United States Supreme Court held that the Appellate Division's denial of the Petitioner's application for admission to the bar without a hearing violated his due process rights:

Moreover, the requirements of procedural due process must be met before a State can exclude a person from practicing law. "A State cannot exclude a person from the practice of law or from any other occupation in a manner or for reasons that contravene the Due Process or Equal Protection Clause of the Fourteenth Amendment." Schware v. Board of Bar Examiners, 353 U.S. 232, 238-239.

* * *

Petitioner was clearly entitled to notice of and a hearing on the grounds for his rejection either before the Committee or before the Appellate Division. Goldsmith v. Board of Tax Appeals (270 U.S. 117); cf. In re Oliver, 333 U.S. 257, 273.

* * *

Petitioner had no opportunity to ascertain and contest the bases of the Committee's reports to the Appellate Division, and the Appellate Division gave him no separate hearing.

* * *

We hold that petitioner was denied procedural due process when he was denied admission to the Bar by the Appellate Division without a hearing on the charges filed against him before either the committee or the Appellate Division.

(Willner v. Committee, supra at 102, 103, 105, 106).[2]

The New York Court of Appeals has long and consistently recognized that members of the bar--prospective or actual--cannot be deprived of the right to practice law without due process (Matter of Eldridge, 82 N.Y. 161 [1880]; see also Matter of Dondi, 63 NY2d 331, Matter of Neuy, 61 NY2d 513, Matter of Anonymous, 41 NY2d 506, Matter of Kimball, 33 NY2d 586). In Matter of Mitchell, 40 NY2d 153, that Court, citing both Willner and Schware, stated that

---

[2]These same "federally protected rights" have been held to include an attorney's right to procedural due process in a state disciplinary proceeding (Matter of Ruffalo, 390 U.S. 544, 550 [1967]). In Ruffalo, this Court recognized that procedural due process "includes fair notice of the charge . . . and opportunity afforded [to] him for explanation and defense" (supra, citing in part Randall v. Brigham, 7 Wall. 523, 540).

"the starting point for a discussion of appellant's due process claim must be the well-accepted rule that 'the requirements of procedural due process must be met before the State can exclude a person from practicing law'" (supra at 156).

Moreover, in Matter of Weiss, 20 NY2d 697, the New York Court of Appeals, citing Willner, supra, reversed an order of the lower court which denied appellant's motion for, among other things, a hearing and determination de novo of her application for admission to the Bar:

> Order reversed, without costs, and matter remanded to the Appellate Division, Second Department, with instructions to conduct a hearing in accordance with the ruling in Willner v. Committee on Character (373 U.S. 96), on reasonable notice to appellant containing a plain and concise statement of the particular charges against her on account of which her character and fitness to practice law have

> been disapproved, with opportunity to her to be confronted by and to cross-examine the witnesses against her and that in default thereof she be admitted to the Bar.

(Supra at p. 698, emphasis added).

In accordance with these due process rights, the Rules of the Appellate Division provide that where the Committee on Character and Fitness, following investigation of an application for admission to the Bar, "shall fail to approve the application . . . a hearing should be held expeditiously . . ." (22 NYCRR 690.10), that notice thereof shall be given to the applicant, and: "In addition, the notice of hearing shall inform the applicant of the matters to be inquired into and of the applicant's right to be represented by an attorney, . . ." (22 NYCRR 690.11).

The Committee's letter of May 5, 1986, informing Petitioner that the Committee voted "to deny your admission," set forth two specific bases for its decision, the second of which reads as follows:

> 2. Your failure to indicate to the general public, as evidenced by the letterhead on your office stationery, that you were not an attorney duly admitted to practice in the State of New York.

(33a)

At no time was Petitioner given notice that this matter was being inquired into, nor was he given a hearing on same, as required by the principles of due process of law cited above and the specific rules of the Appellate Division, requiring such notice and hearing of matters upon which the Committee bases its decision to deny admission (Rules 690.10, 690.11 and 690.15).

The Committee's failure to give Petitioner notice of this area of inquiry was bad enough. Mr. Affatato's blatantly false assertion, made at the Committee's February 28, 1987 meeting, that "We then got down to the very interesting area of inquiry as to whether or not he was ever in the practice of law in New York . . . well I showed him a copy of a letterhead which we had in our file indicating that he maintains an office in Staten Island . . .", was unforgivable (49a).

Had such notice and hearing been given, Petitioner would have provided a meritorious response to this matter. Clearly, Petitioner, based upon his admission to the New Jersey bar, had every right to maintain an office in New York--together with a "resident", New York partner--in reliance upon the New York Court of Appeals' decision in Bar

Association v. Jacoby & Meyers (61 NY2d 130, 472 NYS2d 890 [1984]), etc., which held among other things that:

> 1. A multistate law firm (consisting of partners admitted to practice in different States) may practice law in New York State if at least one of its active partners is admitted to practice in this State, and it may conduct such practice under a firm name comprised of a combination of surnames, although none of them is the surname of the partner licensed to practice in New York. The firm may use a letterhead and advertisements disclosing the firm name only, but if on either there also appears the name of any individual partner or associate who is not admitted to practice in New York there shall be a clear indication of that fact.

(Supra at 901.)

These substantial procedural violations by the Committee required at the very least that this subject matter be clearly and specifically disregarded by the Appellate Division or that the entire matter be remanded to the

Committee for further proceedings consistent with Petitioner's due process rights.

The Appellate Division's denial of Petitioner's admission without disregarding this subject matter and without remand to the committee for further proceedings clearly constituted a denial of procedural due process.

Moreover, it is apparent that Petitioner was denied a full and fair hearing and was substantially prejudiced by the several inaccurate and gratuitous characterizations ascribed to him by the reporting member of the Committee, namely that Petitioner was guilty of engaging in "machinations" and tried "to avoid answering certain questions directly." At the very least, Petitioner was entitled to a full and fair hearing before an unbiased Committee. It goes

without saying that both the Petitioner and the Appellate Division were entitled to a report by the committee which fairly and accurately described the facts disclosed by the record of Petitioner's application for admission. It seems obvious that the committee on Character and Fitness failed on both counts.

The Petitioner was so prejudiced by the Committee's distortions of the facts, which distortions were provided to the Appellate Division as a basis for its determination, that the report should have been rejected, the Appellate Division's negative determination based thereon vacated and Petitioner's admission granted. The Appellate Division's failure to do so constituted an abuse of discretion and denied Petitioner the procedural due process to which he was entitled.

A Writ of Certiorari should be granted for the following reasons:

1. Petitioner's procedural due process rights have been seriously compromised by the committee's failure to give him notice and opportunity to be heard on all of the bases upon which they recommended his denial of admission.

2. The Appellate Division's denial of admission, based upon the faulty findings of fact as set forth by the Committee on Character and Fitness in its report to the court constitutes a denial of a full, fair and impartial hearing upon his application for admission.

3. Adherence by the Appellate Division to its determination to deny admission, based upon the facts and circumstances presented herein, particularly the errors contained in the Committee's report, constituted an abuse

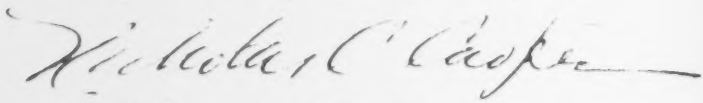
of discretion amounting to a denial of procedural due process.

CONCLUSION

For the reasons noted herein, a writ of certiorari should issue to review the procedures resulting in the denial of admission to the bar in the Court below.

Dated: Brooklyn, New York
March 18, 1988

Respectfully submitted,



Nicholas C. Cooper
Attorney for Petitioner

APPENDIX

STATE OF NEW YORK,
COURT OF APPEALS

At a session of the Court, held at Court of Appeals Hall in the City of Albany on the twenty-third day of December A.D. 1987

PRESENT, HON. SOL WACHTLER, Chief Judge, presiding.

2-12 Mo. No. 1290
In the Matter of Emile E. Gouiran,

Appellant,

for admission to the Bar of the State of New York.

A motion for leave to appeal to the Court of Appeals in the above cause having heretofore been made upon the part of the appellant herein and papers having been submitted thereon and due deliberation having been thereupon had, it is

ORDERED, that the said motion be and the same hereby is denied.

/s/ Donald M. Sheraw
Donald M. Sheraw
Clerk of the Court

At a Term of the Appellate Division of the Supreme Court of the State of New York, Second Judicial Department, held in Kings County on November 24, 1986.

HON. MILTON MOLLEN, Presiding Justice,
HON. GUY J. MANGANO,
HON. LAWRENCE J. BRACKEN, Associate
HON. RICHARD A. BROWN, Justices
HON. SYBIL HART KOOPER.

In the Matter of

Emile E. Gouiran, : Order

for admission to the Bar of the State of New York,

Petitioner.

The above named Emile E. Gouiran, petitioner, having made a formal application to this court for admission as an attorney and counselor at law of the State of New York, by a notice of petition, dated and sworn to on July 2,

1986, notwithstanding an adverse decision and recommendation of the Committee on Character and Fitness for the Second Judicial Department, or in the alternative, for oral argument of this application in the interest of justice, if the court be disposed to deny admission; and the said application and all the papers having been considered by this court; due deliberation having been had thereon; and upon the decision slip of the court herein, heretofore filed and made a part hereof, it is unanimously

ORDERED that the said application is hereby denied in all respects.

Enter:

/s/ MARTIN H. BROWNSTEIN
Clerk of the Appellate Division

SUPREME COURT, STATE OF NEW YORK
APPELLATE DIVISION, SECOND DEPT.

I, MARTIN H. BROWNSTEIN, Clerk of the Appellate Division of the Supreme Court, Second Judicial Department, do hereby certify that I have compared this copy with the original filed in my office on Nov. 24 1986 and that this copy is a correct transcription of the original.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the seal of this Court on Dec. 10 1986.

/s/ MARTIN H. BROWNSTEIN
Clerk

nl 0292L

November 24, 1986.

No. 5488 In the Matter of Emile E. Couiran, for admission to the Bar of the State of New York, petitioner.

Formal application by petitioner for admission as an attorney and counselor at law in the State of New York, notwitstanding an adverse decision and recommendation of the Committee on Character and Fitness, or in the alternative, for oral argument of this application in the interest of justice, if the court be disposed to deny admission.

Application denied in all respects.

MOLLEN, P.J., MANGANO, BRACKEN, BROWN & KOOPER, JJ., concur.

November 24, 1986 IN RE GOUIRAN, EMILE E. No. 5488

----------NOTICE OF ENTRY----------

Sir: Please take notice that the within is a (certified) true copy of a order duly entered in the office of the clerk of the within named court on November 24, 1986

Dated, October 23, 1987

Yours, etc.,

Attorney for Nicholas C. Cooper
Applicant/Petitioner

Office and Post Office Address

26 Court Street
Brooklyn, New York 11242
(718) 624-6612

To Bartholomew M. Verdirame,
Secretary
Committee on Character & Fitness

----------NOTICE OF SETTLEMENT----------

Sir:--Please take notice that an order

of which the within is a true copy will be presented for settlement to the Hon.

one of the judges of the within named Court, at

on 19

at M.

Dated,

Yours, etc.,

Attorney for Nicholas C. Cooper

Office and Post Office Address

26 Court Street
Brooklyn, New York 11242
(718) 624-6612

To

Attorney(s) for

Index No. Year 19

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION
SECOND JUDICIAL DEPARTMENT

In the Matter of the Application of

EMILE E. GOUIRAN

For Admission to the Bar of the
State of New York

ORDER WITH NOTICE OF
ENTRY

Attorney for Nicholas C. Cooper
Applicant/Petitioner

Office and Post Office Address

26 Court Street
Brooklyn, New York 11242
(718) 624-6612

To

Attorney(s) for

Service of a copy of the within

is hereby admitted.

Dated,

.....

Attorney(s) for

_____

(If both boxes are checked--indicate after names, type of service used.)

STATE OF NEW YORK, COUNTY OF KINGS ss.:

I, Nicholas C. Cooper being an attorney duly admitted in New York State affirms that:

On October 23, 1987 I served the within order with notice of entry

(x) Service by mail — by depositing a true copy thereof enclosed in a post-paid wrapper, in an official depository under the exclusive care and custody of the U.S. Postal Service within New York State, addressed to each of the following persons at the last known address set forth after each name:

( ) Personal Service on Individual — by delivering a true copy thereof personally to each person named below at the address indicated. I knew each person served to be the person mentioned and described in said papers as a party therein:

Bartholomew M. Verdirame, Secretary
Committee on Character & Fitness
210 Joralemon Street
Brooklyn, New York 11201

Dated: Brooklyn, New York
October 23, 1987

/s/ Nicholas C. Cooper
The name signed must be printed beneath

Nicholas C. Cooper

At a Term of the Appellate Division of the Supreme Court of the State of New York, Second Judicial Department, held in Kings County on June 5, 1987.

HON. MILTON MOLLEN, Presiding Justice,
HON. GUY J. MANGANO,
HON. LAWRENCE J. BRACKEN, Associate
HON. RICHARD A. BROWN, Justices
HON. SYBIL HART KOOPER.

In the Matter of

Emile E. Gouiran, Petitioner, for admission to the Bar of the State of New York,

Order

This court, by a prior order, dated November 24, 1986, having denied the above named petitioner's application for admission as an Attorney and Counselor at Law of the State of New York, and the petitioner having moved by a notice of

motion, dated March 6, 1987, (1) for renewal and reargument of the said petitioner's application for admission as an attorney and counselor at law to the Bar of the State of New York, (2) to vacate this court's said order, dated November 24, 1986, which denied the application, or in the alternative, (3) to remand the application to the Committee on Character and Fitness for further proceedings or, a further alternative, (4) grant petitioner leave to appeal to the Court of Appeals from this court's order dated November 24, 1986;

Now, upon the said notice of motion, the affirmation of Nicholas C. Cooper and the affidavit of Emile E. Gouiran and the exhibits annexed thereto and the petitioner's memorandum of law in support of the said motion; and upon all the

papers filed herein; and the motion have been submitted by Nicholas C. Cooper, Esq., of counsel for the petitioner, due deliberation having been had thereon; and upon this court's decision slip heretofore filed and made a part hereof, it is

ORDERED that the said motion is hereby denied in all respects.

Enter:

/s/ MARTIN H. BROWNSTEIN

Clerk of the Appellate Division.

SUPREME COURT, STATE OF NEW YORK
APPELLATE DIVISION, SECOND DEPT.

I, MARTIN H. BROWNSTEIN, Clerk of the Appellate Division of the Supreme Court, Second Judicial Department, do hereby certify that I have compared this copy with the original filed in my office on June 5, 1987 and that this copy is a correct transcription of the original.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the seal of this Court on June 5, 1987.

/s/ MARTIN H. BROWNSTEIN
Clerk

nl 2857L

June 5, 1987.

No. 2250 In the Matter of Emile E. Gouiran, petitioner, for admission to the Bar of the State of New York.

Motion by petitioner (1) for renewal and reargument of the application by Emile E. Gouiran for admission as an attorney and counselor at law to the Bar of the State of New York, (2) to vacate this court's order dated November 24, 1986 which denied the application, or in the alternative, (3) to remand the application to the Committee on Character and Fitness for further proceedings or, a further alternative, (4) grant petitioner leave to appeal to the Court of Appeals

from this court's ordered dated November 24, 1986.

Motion denied in all respects.

MOLLEN, P.J., MANGANO, BRACKEN, BROWN & KOOPER, JJ., concur.

June 5, 1987. IN RE GOUIRAN, EMILE E. No. 2250

----------NOTICE OF ENTRY----------

Sir: Please take notice that the within is a (certified) true copy of a order duly entered in the office of the clerk of the within named court on June 5, 1987.

Dated, October 23, 1987

Yours, etc.,

Attorney for Nicholas C. Cooper
Applicant/Petitioner

Office and Post Office Address

26 Court Street
Brooklyn, New York 11242
(718) 624-6612

To Bartholomew M. Verdirame,
Secretary
Committee on Character & Fitness

----------NOTICE OF SETTLEMENT----------

Sir:--Please take notice that an order

of which the within is a true copy will be presented for settlement to the Hon.

one of the judges of the within named Court, at

on 19

at M.

Dated,

Yours, etc.,

Attorney for Nicholas C. Cooper

Office and Post Office Address

26 Court Street
Brooklyn, New York 11242
(718) 624-6612

To

Attorney(s) for

Index No. Year 19

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION
SECOND JUDICIAL DEPARTMENT

In the Matter of the Application of

EMILE E. GOUIRAN

For Admission to the Bar of the
State of New York

ORDER WITH NOTICE OF
ENTRY

Attorney for Nicholas C. Cooper
Applicant/Petitioner

Office and Post Office Address

26 Court Street
Brooklyn, New York 11242
(718) 624-6612

To

Attorney(s) for

Service of a copy of the within

is hereby admitted.

Dated,

.....

Attorney(s) for

_____

(If both boxes are checked--indicate after names, type of service used.)

STATE OF NEW YORK, COUNTY OF KINGS ss.:

I, Nicholas C. Cooper being an attorney duly admitted in New York State affirms that:

On October 23, 1987 I served the within order with notice of entry

(x)	Service by mail	by depositing a true copy thereof enclosed in a post-paid wrapper, in an official depository under the exclusive care and custody of the U.S. Postal Service within New York State, addressed to each of the following persons at the last known address set forth after each name:
( )	Personal Service on Individual	by delivering a true copy thereof personally to each person named below at the address indicated. I knew each person served to be the person mentioned and described in said papers as a party therein:

Bartholomew M. Verdirame, Secretary
Committee on Character & Fitness
210 Joralemon Street
Brooklyn, New York 11201

Dated: Brooklyn, New York
October 23, 1987

/s/ Nicholas C. Cooper
The name signed must be printed beneath

Nicholas C. Cooper

SUPREME COURT APPELLATE DIVISION
SECOND JUDICIAL DEPARTMENT

OFFICE OF COMMITTEES ON CHARACTER AND FITNESS

210 Joralemon Street, 13th Floor
Brooklyn, N.Y. 11201

July 3, 1985

Mr. Emile E. Gouiran
50 Eastern Loop Road
Staten Island, N.Y. 10304

Dear Mr. Gouiran:

Your application for admission to the Bar has been referred to a Subcommittee, to take proof of all relevant facts and circumstances relating to, or bearing upon the following matters, and to report thereon to the full Committee, namely:

1. Matters underlying sanctions taken by N.Y. Dept. of State, Division of Licensing Services with respect to your

Real Estate Broker's License, including but not limited to:

a. Disposition of such matters; and

b. The current status of your Real Estate Broker's License;

2. Other litigated matters involving you individually and/or in conjunction with entities you are or were affiliated with, all of which is ostensibly set forth in your application (and papers amending/supplementing it);

3. The extent of your involvement, if any, in the issuing of a memorandum dated November 1, 1973 pertaining to the blacklisting of a group of (11) eleven attorneys...;

4. Matters relating to the nature and extent of your law practice in New Jersey;

5. Matters relating to your candor and truthfulness in responding to questions set forth in your application to law school, your application for admission to the New Jersey Bar, and the questionnaire portion of your application for admission to the Bar of the State of New York; and

6. Such other and further matters as may be developed upon the hearing and may properly come before the Committee.

A hearing will be held at the library of the N.Y. Supreme Court, Nassau County, 2nd Floor, Supreme Court Drive, Mineola, New York on Thursday, July 25, 1985, at 2:00 p.m.

You may, if you wish, at all times by [sic] represented by a duly licensed attorney-at-law of this State. Subpoenas, if desired, may be obtained through this office.

At such hearing, you are entitled to cross-examine any witnesses called therein, and to examine and, at your expense, to make copies of any documents or other papers offered in evidence, and to obtain a copy of the transcript of such hearing at your expense.

If any new matters may be developed at the said hearing, even though not hereinabove specifically set forth, at the conclusion of said hearing, an opportunity will be afforded to you to present further proof at a later date as to any such new matters, or to furnish any proof in rebuttal of any evidence developed in said hearing, and to offer any other evidence which you deem relative to your application.

If you or your attorney desire further information as to the procedures

in said hearing, same may be obtained from the undersigned.

Please advise the undersigned, in writing, whether you will appear at the time and place indicated.

Very truly yours,

Bartholomew M. Verdirame
Secretary

BMV:rn

cc: Peter R. Affatato, Esq.
M. Kathryn Meng, Esq.
Nicholas C. Cooper, Esq.
200 W. Beechtree Lane
Wayne, PA 19087
Bernard T. McCabe (PLEASE RESPOND)

If this Subcommittee hearing notice is received less than twenty (20) days prior to the date on which the hearing has been scheduled, please sign the following:

I agree to waive 20 days written notice of the above hearing to which I am entitled pursuant to § 690.11 of the

Rules of the Appellate Division of the Supreme Court, Second Judicial Department (Eff. June 25, 1980).

Emile E. Gouiran

SUPREME COURT APPELLATE DIVISION
SECOND JUDICIAL DEPARTMENT

OFFICE OF COMMITTEES ON CHARACTER AND FITNESS

210 Joralemon Street, 13th Floor
Brooklyn, N.Y. 11201

May 5, 1986

Mr. Emile E. Gouiran
50 Eastern Loop Road
Staten Island, N.Y. 10304

Dear Mr. Gouiran:

Please be advised that your application for admission to the Bar of the State of New York has recently been forwarded to the Appellate Division, Second Judicial Department, for further consideration.

At the meeting of the Committee for the Second, Tenth and Eleventh Judicial Districts, the Committee members voted unanimously (with two abstentions) to

deny your admission to the Bar for the following reasons:

1. Your general failure to make adequate or honest disclosures, examples of which were:

a. Your failure to disclose in your New Jersey Bar Application that your New York real estate broker's license had been suspended and was utlimately revoked;

b. Your failure to disclose in your New Jersey Bar Application that you and corporations under your control were involved in civil litigation;

c. Your failure to indicate without further prompting that you had any relationship with Castle Abstract, the entity

which provided a judgment search for you; and

2. Your failure to indicate to the general public, as evidenced by the letterhead on your office stationery, that you were not an attorney duly admitted to practice in the State of New York.

Very truly yours,

/s/ Bartholomew M. Verdirame
Bartholomew M. Verdirame
Secretary

BMV:rn

cc: Nicholas C. Cooper, Esq.
208 West Beechtree Lane, Wayne, PA 19087

Law Offices of
NICHOLAS C. COOPER
208 West Beechtree Lane
Wayne, Pennsylvania 19087
(215) 964-8645

Admitted New York
and Pennsylvania
Bars

New York Office
26 Court Street
Suite 141
Brooklyn, New York
(718) 624-6612

October 13, 1986

Milton Mollen, Presiding Justice
Appellate Division, Second
Judicial Department
45 Monroe Place
Brooklyn, New York 11201

Re: Matter of the Application
of Emile F. Gouiran

Dear Presiding Justice Mollen:

I am in receipt of a copy of letter from the Department of State, before whom Mr. Gouiran's application for reinstatement of his real estate broker's license is pending, requesting a copy of the Character Committee's report to the

Court regarding his application for admission to the Bar.

As you may recall, my request for a copy of that report was denied by the Court.

If the Court is inclined to grant the Department of State's request, I renew my similar request on behalf of my client, Mr. Gouiran. Clearly if the Character Committee's report is relevant to the Department of State's deliberations and it is deemed appropriate that that agency should be permitted access to the full report, then the same must hold true for Mr. Gouiran himself. He, of course, will be directly influenced by the position taken by the Committee and in all fairness should be given a full opportunity to respond to their specific findings.

Very truly yours,

/s/ Nicholas C. Cooper

Nicholas C. Cooper

NCC/hs
cc: Emile E. Gouiran

SUPREME COURT APPELLATE DIVISION
SECOND JUDICIAL DEPARTMENT

OFFICE OF COMMITTEES ON CHARACTER AND FITNESS

210 Joralemon Street, 13th Floor
Brooklyn, N.Y. 11201

In the Matter of the Application

of

EMILE GOUIRAN

for Admission to the Bar

REPORT TO THE COURT

At a meeting of the Character Committee for the Second, Tenth and Eleventh Judicial Districts, held on February 28, 1986, nineteen members being present, the above-captioned application for admission was considered.

Said application was the subject of an extensive Subcommittee hearing held on July 25, 1985, the Subcommittee

consisting of Peter T. Affatato, Esq., and M. Kathryn Meng, Esq.

During that hearing it was ascertained that applicant was admitted to the Bar of the State of New Jersey on June 7, 1984, and that this admission was subsequent to his New York real estate broker's license being revoked for reasons of "untrustworthiness". It was adduced that applicant failed to disclose the revocation of his broker's license in his New Jersey Bar Application.

Said real estate broker's license remains revoked at the present time.

Furthermore, applicant failed to disclose in his New Jersey Bar Application that there were numerous lawsuits against him individually as well as against corporations in which he had an interest.

The Subcommittee characterized his present application as rife with oversights, inaccuracies and omissions to the extent that they would appear deliberate. The Subcommittee further characterized some of his responses as evasive. For example, in one instance, applicant failed to indicate that he had any relationship with a Castle Abstract Company (an entity which provided a judgment search for him) although that Company was located in the same building as his office and was, in fact, owned by his brother-in-law.

It was also the opinion of the Subcommittee that applicant, if not actually practicing law in this State, was, in effect, giving the general public the impression that he was admitted to practice in this State. The letterhead of his office stationery reads "law

offices of Emile E. Gouiran" and shows a post office box address in Staten Island, New York. While his name on the left-hand side of the letterhead is followed by the initials "NJ", there is no indication that such initialling means he is admitted only in New Jersey.

The Court is respectfully referred to the specific nine-page commentary of Peter T. Affatato, Esq., which appears in the attached Minutes of the Full Committee Meeting.

The instant application for admission was unanimously denied by the Full Committee with two abstentions (David R. Siegel, Chairman, and Reinaldo E. Rivera, Esq. both abstaining) on the grounds that applicant does not possess the proper character and fitness requisite for an attorney to be admitted in this State.

Respectfully submitted,

/s/ Bartholomew M. Verdirame
Bartholomew M. Verdirame
Secretary

BMV:rn

Dated: Brooklyn, New York
May 5, 1986

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : SECOND DEPARTMENT
- -x

In the Matter of the Application of

EMILE GOUIRAN

for Admission to the Bar of the
State of New York

- -x

COMMITTEE OF THE WHOLE

February 28, 1986

CHAIRMAN SIEGEL: Peter, that brings us to Emile Gouiran.

MR. AFFATATO: Ladies and gentlemen, I rise to make this report. I have been sitting too long.

You have our report on Emile Gouiran. I am going to take a little bit of your time. I ask you to be patient, because we recommend the denial of this application.

Mr. Gouiran was interviewed by the examining members some time back.

And his application was not less than three inches thick.

The Subcommittee, consisting of Miss Meng and myself, met with him on July 25. At that time he was represented by counsel, and he appeared before us. We have a complete record of the hearing.

We find that this gentleman, 36 years old, married, veteran of the Vietnam war, was involved in real estate matters, and had formed a real estate firm that was called the Richmond Realty Services; that thereafter it was incorporated and became known as the National Richmond Realty Services, Inc.

At the same time, his mother operated another realty firm, of which he was an Officer. That was called the P. Gouiran Realty Holding Corporation.

During the period of time we are talking about, 1969 through 1973, several

law suits were commenced against this applicant and his firm. Most of them had been disposed of. However, that becomes important, because he applied for membership in the New Jersey Bar and failed to reveal that information.

Following--I should say, during that period of time a letter on his stationery was circulated which indicated that his realty firm would discourage the use of certain attorneys who may come into their office, because these attorneys had a unique ability to squash or to reject any deal proposed by his firm.

It was, obviously, circulated to residents in Staten Island; or, those who may have come into the realty office. It did appear on his letterhead. However, he has denied any notice of it. I repeat, he has denied any notice of it.

He said it was disseminated without his permission. We have had no opportunity to contradict that statement; although the usual presumptions, I should think would apply. It was on his letterhead. He should have been aware of it. If he wasn't, he wasn't taking care of his shop.

Following all of his real estate transactions, and all of his machinations in the real estate business, there were several complaints lodged against him with the Department of State, Division of Licensing.

In 1976, a determination was made that his conduct as a real estate broker was--and I quote--untrustworthy, and his license was suspended for 30 days; or, he pay a $250 fine, which he promptly did.

In 1980, two additional complaints were filed against him because of his actions as a real estate broker. As a result of the hearings, his real estate license was revoked.

He failed to advise the officials of New Jersey of that information, although it did appear on his application. And, once again, I will get back to that.

He passed the Bar in 1984. He then applied for Admission to the State of New Jersey. And based upon the advice of counsel, when asked whether or not his license had been revoked, his answer was: No.

When asked whether or not he had been involved in any type of civil proceedings his answer was: No. And he attempted to justify these denials on the basis of advice given to him by attorneys

with whom he has long been associated, either in the real estate business or in the law business.

Now, it is important that you understand the very nature of the question that appeared in that Jersey application. The question was: Has any license been issued to you, and has been revoked, of a professional nature, or any other type license?

As I remember it, that was the question.

That seemed to indicate to him that it had to be of a professional nature. And the attorney who advised him said to him: You need not reveal the fact that your real estate license had been revoked. And he did.

However, when he got down to the civil proceedings he, likewise, said: No, there have been no civil proceedings.

And he had a minimum of three or four civil actions that had been filed against him; some at that time were pending, and others had been disposed of.

Moving over if we may. We find that this gentleman simply tries to avoid answering certain questions directly. During the course of the hearing, we managed to elicit that he maintained an office over on Staten Island. We found out that he has had certain real estate transactions. And in one of the proceedings was a letter from a Castle Abstract. I said to him: Do you have any interest in Castle Abstract?

He said: No.

I said: Well, Castle Abstract is in the very same office building as your office.

He said: Oh! Really! He said: Well, my brother-in-law owns Castle

Abstract. His name is Bob Ryan.

I said: Well, I assume you have, of course, no financial interest; but don't you have some interest in it? Don't you talk to your brother-in-law?

His reply was: I didn't think that was what you had in mind.

And so it went, one question after another.

We then got down to the very interesting area of inquiry as to whether or not he was ever in the practice of law in New York. And he said: No.

Well, I showed him a copy of a letterhead which we had in our file indicating that he maintains a law office in Staten Island. It reads as follows: "Law Office of Emile Gouiran, Post Office Box 318, Staten Island, New York, 10314."

On the left hand side is his name, with the letters M.J. [sic]. Under

that, another attorney, John Beatty, New York-New Jersey."

But the letterhead itself has: Law Offices of Emile Gouiran, located in Staten Island.

We, thereafter, received some additional information from the Supreme Court in Staten Island. It appears--and I want this in the record--that this applicant, in a case pending before the Supreme Court for the County of Richmond entitled: Gateway State Bank -vs- Grimaldi, Index Number 2112 of '81, and bearing Calendar Number 17532, says as follows:

Emile Gouiran, as and for his verified petition for admission pro hoc vice -- which means that he wishes to be admitted for that particular case -- then proceeds to indicate that he is admitted in all the Courts in the State of New

Jersey; the United States District Court, both Districts, and in the United States Tax Courts.

However, in an answer which appears on behalf of his clients, who were the defendants, the following language appears: "Defendants Josephine Grimaldi and Thomas Grimaldi, by their attorney, Emile J. Gouiran, S. John Bates, Esq., of counsel, opposed Plaintiff's motion for consolidation.

In addition thereto, we find that his blue back, his legal back, appears like any of ours; but at the bottom recites as follows: Law offices of Emile Gouiran, 386 Forest Avenue, Staten Island, New York 10301.

Further, we received from the Supreme Court over in Staten Island a copy of this gentleman's petition for admission to the Eastern District, in

which he says that he maintains an office for the practice of law at 78 Main Street, Madison, New Jersey.

However, in connection with an additional form required for admission, namely Form A-0153, he lists his address as being in Staten Island on Forest Avenue.

Ladies and gentlemen, Miss Meng and I wrestled with this. We, like one of our colleagues, was charged with the responsibility of determining whether this gentleman possesses the proper character and fitness. And we have determined in our own minds, and our own hearts, after careful review, that he does not.

We also feel that, in our opinion, he has given the general public the unquestioned impression that he is admitted to practice law in the State of

New York. While we are not in a position to verify that, we feel that, from the information made available to us, he has held himself our as an attorney licensed to practice law in the State of New York.

For that reason we cannot recommend his admission. And we do not feel he has the proper character or fitness for admission in this State.

MR. POGUL: Did he say he was admitted?

CHAIRMAN SIEGEL: Peter, thank you for a very full and complete report.

MR. GUNTHER: What is your motion?

MR. AFFATATO: My motion is that we deny his application for admission.

MR. GUNTHER: Second the motion.

CHAIRMAN SIEGEL: All in favor. Contrary? So ordered.

MR. RIVERA: I have to abstain inasmuch as I have known Mr. Gouiran personally for a few years. I have attended with him at closings on Staten Island at Castle Avenue. I am abstaining for that reason.

CHAIRMAN SIEGEL: It is so noted.

The motion carries.